

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201509243	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/25/2015 1:38 AM	Location of Incident: Weeks Avenue between East 175th and East 174th Streets	Precinct: 46	18 Mo. SOL 4/25/2017	EO SOL 4/25/2017	
Date/Time CV Reported Wed, 10/28/2015 11:25 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/28/2015 11:25 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edwin Ching	01578	917418	046 PCT
2. POM Edmund Zerbo	10338	951464	046 PCT
3. POM Anthony Donato	07509	948904	046 PCT
4. POM William Concannon	23380	945604	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Tatiana Cruz	00400	950253	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edwin Ching	Abuse: Sgt. Edwin Ching stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Edwin Ching	Discourtesy: Sgt. Edwin Ching acted discourteously toward § 87(2)(b)	
C.SGT Edwin Ching	Abuse: Sgt. Edwin Ching refused to provide his name and shield number to § 87(2)(b)	
D.POM Anthony Donato	Abuse: PO Anthony Donato frisked § 87(2)(b)	
E.SGT Edwin Ching	Abuse: Sgt. Edwin Ching authorized the search of the vehicle in which § 87(2)(b) was an occupant.	
F.POM William Concannon	Abuse: PO William Concannon searched the vehicle in which § 87(2)(b) was an occupant.	
G.POM Edmund Zerbo	Abuse: PO Edmund Zerbo searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)		

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online website on October 28, 2015.

On October 25, 2015, § 87(2)(b) who is a commercial taxi driver, was pulled over by Sgt. Edwin Ching of the 46<sup>th</sup> Precinct at 1:38am in the vicinity of Weeks Avenue between East 175<sup>th</sup> and East 174<sup>th</sup> Streets in the Bronx (**Allegation A**). While approaching his vehicle, Sgt. Ching allegedly kicked § 87(2)(b)'s front bumper and struck his driver's side window with his fist (**Allegation B**). In response to § 87(2)(b)'s request for Sgt. Ching's name and shield number, Sgt. Ching allegedly refused to provide them (**Allegation C**).

After § 87(2)(b) was removed from his vehicle, PO Anthony Donato of the 46<sup>th</sup> Precinct frisked him (**Allegation D**). Sgt. Ching then instructed PO Edmund Zerbo (who has since resigned from the New York City Police Department) to search § 87(2)(b)'s vehicle, at which time PO Zerbo and PO William Concannon of the 46<sup>th</sup> Precinct searched the vehicle (**Allegations E, F and G**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was not summonsed or arrested during this incident.

§ 87(2)(b) captured video footage on his cell phone during this incident (full video contained in BR 12 and transcribed in BR 14). Snagit copies of the video have been placed below.

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate his complaint on November 10, 2015, § 87(2)(b).
- No notices of claim have been filed in regard to this incident as of January 11, 2016 (BR 2).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint. § 87(2)(b)
- Sgt. Ching has been a member of the NYPD for 19 years and has been the subject of 26 previous CCRB allegations involving 13 cases and resulting in no substantiated allegations. § 87(2)(g)
- PO Donato has been a member of the NYPD for 5 years and has been the subject of 37 previous CCRB allegations involving 13 cases. Stop, refusal to provide name/shield number, and retaliatory summons allegations have each been substantiated against PO Donato one time in case number 201108564. Although the CCRB recommended charges

for each of these, the NYPD declined to prosecute the latter two and issued PO Donato Command Discipline B for the first. Twenty-nine of the allegations pled against PO Donato have been under the Abuse of Authority category, including four frisk allegations, § 87(2)(g).

- PO Concannon has been a member of the NYPD for 8 years and has been the subject of four previous allegations, resulting in a substantiated frisk allegation in case number 201104417. The Board recommended charges, but the NYPD declined to pursue any disciplinary action.

#### **Potential Issues**

- PO Zerbo resigned from the NYPD as of December 20, 2015. § 87(2)(g)
- The two fares riding as § 87(2)(b)'s passengers could not be identified, as § 87(2)(b) did not know them and no police action was taken with respect to them.

#### **Findings and Recommendations**

##### **Allegation Not Pled**

- Abuse of Authority - Threat of Arrest: On the video footage, multiple officers can be heard telling § 87(2)(b) that he could be subject to arrest. § 87(2)(g)

##### **Allegation A – Abuse of Authority – Sgt. Edwin Ching stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Ching stopped § 87(2)(b)'s vehicle § 87(2)(g)

§ 87(2)(b) testified that he observed a double-parked police vehicle up ahead with its lights engaged and three or four officers standing outside of it. He came to a complete stop approximately 15 feet away from the closest officer and honked his horn twice to indicate that he wished to pass them by (BR 1).

Sgt. Ching testified that, while he was in the middle of performing a vehicle stop, he heard a vehicle honking its horn from behind him. He turned to see § 87(2)(b)'s vehicle, which was stopped behind him and was “close enough to scare [him],” but could not estimate how far away it was. He therefore approached him to verify whether § 87(2)(b) understood that his driving behavior was unsafe (BR 5).

PO Cruz testified that § 87(2)(b)'s vehicle stopped a few feet behind where she stood. PO Donato stated that § 87(2)(b) stopped 10-15 feet away from the front area of the initially-stopped vehicle, and that he did not know how close that was to the other officers. PO Concannon, who stood behind Sgt. Ching during the initial vehicle stop, testified that § 87(2)(b)'s vehicle came within five feet of where he himself stood (BR 6 – 8).



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As such, the proximity within which § 87(2)(b) stopped his vehicle (and the resulting threat to the officers' safety) is in dispute here. In the video footage § 87(2)(b) provided, Sgt. Ching and § 87(2)(b) carry out this dispute in dialogue, with Sgt. Ching accusing § 87(2)(b) of "almost hitting him," and § 87(2)(b) denying that he had done so. It is during this exchange that Sgt. Ching requests identification from § 87(2)(b) (Full video in BR 12 and transcribed in BR 14).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

New York State Vehicle and Traffic Law (Article 26, Section 114-a) states that drivers must exercise care when approaching an authorized emergency vehicle which is parked and displaying red and/or white flashing lights (BR 16). Officers may stop an individual whom they have reasonable suspicion to believe has committed a crime. People v. DeBour, 40 N.Y. 2d 210 (BR 17).

§ 87(2)(g)  
[REDACTED]

**Allegation B – Abuse of Authority – Sgt. Edwin Ching acted discourteously toward § 87(2)(b)**

It is undisputed that Sgt. Ching made some type of physical contact with § 87(2)(b)'s vehicle as he was approaching it. § 87(2)(g)  
[REDACTED]

§ 87(2)(b) alleged that, while walking toward his vehicle, Sgt. Ching kicked the front bumper. In addition to witnessing this kick, § 87(2)(b) felt its effects while seated in the driver's seat. Sgt. Ching then allegedly punched § 87(2)(b)'s driver's side window, which was closed, one time, with a closed fist (BR 1).

During his CCRB testimony, Sgt. Ching acknowledged having “touched” or “hit” the front area of § 87(2)(b)'s vehicle. He was unable to elaborate further on which part of his body made contact with § 87(2)(b)'s vehicle and conjectured that he may have lost his balance. When asked directly whether he kicked or made a kicking motion toward the vehicle's front bumper area, Sgt. Ching stated, “That might have been the initial, when I lost my balance, or when I thought I was getting hit.” He could not recall whether he had any physical contact with § 87(2)(b)'s window (BR 5).

No other officers reported observing Sgt. Ching make physical contact with § 87(2)(b)'s vehicle (BR 6 – 8).



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The video footage (full video contained in BR 12 and transcribed in BR 14) § 87(2)(b) captured of this incident does not show this allegation. It does, however, include a later conversation between § 87(2)(b) (who has been removed from the vehicle by this point) and Sgt. Ching, in which § 87(2)(b) accuses Sgt. Ching of punching his car. Sgt. Ching's reply is somewhat inaudible and is rendered best as “No, I did it ‘cause I was scared,” or “No, I didn't, ‘cause I was scared.” When this video was played for Sgt. Ching during his interview, he was unable to clarify the statement that he made, nor was he able to explain its meaning.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Officers are to be discourteous when interacting with members of the public. NYPD Patrol Guide Procedure 203-09 (BR 18).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation C – Abuse of Authority – Sgt. Edwin Ching refused to provide his name and shield number to § 87(2)(b)**

The facts, which are captured on the video footage and generally corroborated by all parties, are as follows:



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§ 87(2)(b) requested Sgt. Ching's name and shield number during the first moments of the vehicle stop. In response, Sgt. Ching showed him his police identification card and his shield for a duration of four seconds, but does not state this information aloud, and § 87(2)(b) makes continued requests for it and Sgt. Ching replies, "No, 'cause now you're telling me you don't have a license." At the conclusion of the incident, approximately ten minutes later, § 87(2)(b) tells Sgt. Ching that he intends to file a complaint against him, to which Sgt. Ching replies with his shield number (full video contained in BR 12 and transcribed in BR 14).

Sgt. Ching, in his CCRB statement, initially did not recall § 87(2)(b) asking him for his name and shield number while § 87(2)(b) was still inside of the vehicle. After viewing the video, he stated that he did not provide his information at such time because he was in the middle of an investigation and § 87(2)(b) was refusing to comply with his orders (BR 5).

Officers are to provide their rank, name, shield number, and command, or otherwise provide them, to anyone who requests them. Ample time ought to be given for the individual to note this information NYPD Patrol Guide Procedure 203-09. (BR 18).

§ 87(2)(g)  
[REDACTED]

**Allegation D – Abuse of Authority – PO Anthony Donato frisked § 87(2)(b)**

It is undisputed that PO Donato frisked § 87(2)(b) § 87(2)(b) alleged it, PO Donato acknowledged it, and the video footage shows it. § 87(2)(g)  
[REDACTED]

§ 87(2)(b) stated that PO Donato frisked him at the rear of the vehicle shortly after he exited. He acknowledged having a bulge in one pant pocket from his money and a set of keys in his other pant pocket. He reported that PO Donato patted down the outside of both of these pockets and asked § 87(2)(b) what the objects each were, but did not frisk elsewhere on § 87(2)(b)'s person (BR 1).

PO Donato testified that, shortly after § 87(2)(b) exited from the vehicle, he noticed a bulge in § 87(2)(b)'s right pant pocket, which appeared pointy. The shape resembled a pocket knife to PO Donato, though he could not further describe its appearance. PO Donato stated that he frisked that pocket only and asked § 87(2)(b) what the object was; though he could not recall

during his CCRB interview what § 87(2)(b) claimed the object to be, he did recall that whatever § 87(2)(b) said it was allayed PO Donato's concerns that it was a weapon (BR 7).



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The video footage corroborates § 87(2)(b)'s account of PO Donato frisking both pockets, and it corroborates both of their accounts of PO Donato verbalizing his actions as he performed them. PO Donato's recollection of the bulge, as he described it in his CCRB interview, aligns with the explanations for the frisk that he offered § 87(2)(b) in real-time, as captured on video.

A frisk requires reasonable suspicion that a suspect is armed. People v. DeBour 40 N.Y.2d 210 (BR 17).

§ 87(2)(g)

**Allegation E – Abuse of Authority – Sgt. Edwin Ching authorized the search of the vehicle in which § 87(2)(b) was an occupant.**

**Allegation F – Abuse of Authority – PO William Concannon searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation G – Abuse of Authority – PO Edmund Zerbo searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Concannon and PO Zerbo searched § 87(2)(b)'s vehicle after § 87(2)(b) was removed from his vehicle. § 87(2)(b) alleged the vehicle search occurred, the video footage captured the vehicle search, and the involved officers acknowledged that such a search occurred. § 87(2)(g)

Sgt. Ching testified that, during his initial interaction with § 87(2)(b) at the driver side window, he observed a bottle or multiple bottles on the front passenger-seat floor area. He described the bottles as clear but was unable to recall what type of material they were and whether or not they had labels. Around this time, he asked § 87(2)(b) whether he was intoxicated. He suspected him of such because of § 87(2)(b)'s ostensible failure to comprehend that he must stop for emergency vehicles, and also because § 87(2)(b) stated that he feared the officers might beat him up or kill him (BR 5).

§ 87(2)(b) who was asked to step out of the vehicle after failure to provide documentation, spoke to Sgt. Ching at the rear of his vehicle. During this conversation, Sgt. Ching stated that he ascertained that § 87(2)(b) was not intoxicated by observing his physical demeanor closely. No further steps were taken on scene to verify § 87(2)(b)'s sobriety (BR 5).

Sgt. Ching then instructed PO Zerbo to search § 87(2)(b)'s vehicle for alcoholic beverages. Afterward, PO Zerbo told him that "everything was ok," and did not provide further details about

what, if anything, had been recovered. To Sgt. Ching's recollection, no other officers were involved in the search and he did not recall PO Concannon being on scene (BR 5).

PO Zerbo resigned from the police department shortly after this incident occurred and was unable to be interviewed for this case. Although the remaining three officers on scene were all in the vicinity of § 87(2)(b)'s car, none of them reported viewing any bottles inside of the car. PO Concannon was indisputably also involved in searching the vehicle, based upon the video footage as well as his own acknowledgment of searching it. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)



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When § 87(2)(b) returned to his vehicle, still filming, the camera catches two Red Bull cans and two spray air-freshener canisters on the front passenger seat (full video contained in BR 13 and transcribed in BR 15). When asked during his CCRB statement whether there were any cans or bottles in his vehicle, § 87(2)(b) stated that he drinks one to three Red Bulls per evening shift and then leaves them on the front passenger floor. He denied having consumed any alcohol on the evening of the incident or having any other beverage containers inside of his vehicle (BR 1).

A warrantless search of a vehicle is permissible when the police have probable cause to believe that the vehicle contains contraband, a weapon, or evidence of a crime. People v. Yancy, 86 N.Y.2d(1995) (BR 19).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

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§ 87(2)(g)

PO Concannon acknowledged searching § 87(2)(b)'s vehicle, § 87(2)(g). He denied having been instructed by Sgt. Ching to search § 87(2)(b)'s vehicle, and similarly denied having heard Sgt. Ching instruct PO Zerbo to do so. Instead, PO Concannon testified that he decided to search the vehicle of his own volition because he suspected § 87(2)(b) of being armed. Although he stated that § 87(2)(b) made no movements inside of the vehicle apart from those consistent with video recording, PO Concannon believed that § 87(2)(b) may be armed because many taxi drivers carry weapons for their own protection. PO Concannon additionally noted that § 87(2)(b)'s refusal to comply with Sgt. Ching's instructions was "irrational," therefore additionally raising his



suspicion. Apart from his claim about taxi drivers' habits and his assessment of § 87(2)(b)'s behavior as "irrational," PO Concannon cited no other reasons for suspecting him of being armed, and no other reasons prompting his search of the vehicle (BR 8).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

§ 87(2)(g), § 87(4-b)  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED].

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Squad: 15

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Squad Leader: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date